

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:19-MC-00023-RJC

STATE OF NORTH CAROLINA

v.

ALSTON A. BENNETT III

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ORDER

THIS MATTER is before the Court on the defendant's pro se Notice of Removal of Action under 28 U.S.C. § 1441(b) by Diversity of Citizenship of Both Defendant and Third Party Interpleader. (Doc. No. 1).

The defendant seeks to remove criminal Case Nos. 19CR050410 and 19CR84 from the General Court of Justice, District Court Division for Union County, North Carolina. (Id. at 1). In the first case, it appears that he was arrested on a fugitive warrant based on his alleged failure to appear in the Duval County (Florida) Circuit Court on a charge of Fleeing or Attempting to Elude a Law Enforcement Officer. (Id. 19-23). In the second case, it appears that the defendant was sentenced to 30 days' imprisonment for contempt of court, which he appealed to Superior Court. (Id. at 24-25).

The defendant alleges this Court has original jurisdiction over the state court matters under 28 U.S.C. § 1332(a) based on diversity of citizenship of the parties and an amount in controversy exceeding \$75,000. (Id. at 3-4). That statute, however, relates to federal jurisdiction over civil actions. Criminal defendants may only remove state criminal prosecutions to federal court in rare circumstances. See 28 U.S.C. § 1442 (criminal prosecutions against federal agencies and officers), §

1442a (criminal prosecutions against members of the armed services), and § 1443 (criminal prosecutions involving denial of equal civil rights).

A notice of removal of a criminal case must include all grounds for removal; failure to do so constitutes their waiver. 28 U.S.C. § 1455(b)(2). Here, the defendant does not allege any circumstance justifying the removal of his criminal cases under §§ 1442, 1442a, or 1443. Accordingly, the Court finds that it clearly appears on the face of the notice and attached exhibits that removal should not be permitted. 28 U.S.C. §1455(b)(4); North Carolina v. Dupree, 521 F. App'x 181 (4th Cir. 2013) (district court lacks subject matter jurisdiction where criminal defendant fails to make the requisite showing for removal).

IT IS, THEREFORE, ORDERED that this case is summarily **REMANDED** to the General Court of Justice, District Court Division for Union County, North Carolina.

Signed: February 26, 2019



Robert J. Conrad, Jr.
United States District Judge

